

**POTTER HANDY, LLP**

JAMES M. TREGLIO, SBN 228077

JimT@potterhandy.com

100 Pine St., Ste 1250

San Francisco, CA 94111

Telephone: (858) 375.7385

Facsimile: (888) 422-5191

*Attorney for Plaintiff Briana Valencia*

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

BRIANA VALENCIA, an individual, on  
behalf of all persons similarly situated on  
behalf of the State of California, as a private  
attorney general, and on behalf of all  
aggrieved employees,

Plaintiff,

v.

VF OUTDOOR, LLC, a California limited  
liability company, and DOES 1 to 50,  
inclusive,

Defendants.

**CASE NO: 1:20-CV-01795-DAD-SKO**

Hon. Sheila K. Oberto/ Dept. 7

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF  
SETTLEMENT AND ENTRY OF  
JUDGMENT; DECLARATION OF JAMES  
M. TREGLIO; [PROPOSED] JUDGMENT**

Hearing:

Date: January 21, 2025

Time: 1:30 p.m.

Dept.: 7

**TO THE COURT, THE PARTIES, AND THEIR ATTORNIES OF RECORD**

Please take notice that on January 21, 2025 at 1:30 p.m. or as soon thereafter as counsel may be heard in Department 7 of the above-entitled Court, Plaintiff Briana Valencia ("Plaintiff") will move for an Order granting final approval of settlement.

This Application is made on the grounds set forth in the accompanying materials. This Application will be based upon this notice, the points and authorities set forth below, the attached declaration, and the complete files and records in this action. A proposed judgment is lodged concurrently herewith.

1 Dated: December 12, 2024

POTTER HANDY, LLP

2  
3 /s/ James M. Treglio

4 By: \_\_\_\_\_  
5 James M. Treglio

6 *Attorney for Plaintiff Briana Valencia, in her*  
7 *capacity as Private Attorney General*  
8 *Representative*

## Table of Contents

TABLE OF AUTHORITIES .....	II
I. INTRODUCTION .....	1
II. THE GOALS OF PAGA AND ITS REQUIREMENTS .....	2
III. BECAUSE THE ALLEGEDLY AGGRIEVED EMPLOYEES HAVE NO SUBSTANTIVE CLAIMS, TRADITIONAL NOTICE IS NOT REQUIRED .....	5
IV. RELEVANT ISSUES IN THE CURRENT LITIGATION AND INVESTIGATION AND DISCOVERY REGARDING DEFENDANT’S LABOR PRACTICES, AND RISKS ASSOCIATED WITH LITIGATION.....	5
V. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES.....	6
A. Summary of Settlement Terms .....	7
B. Payment and the Notice.....	7
C. Settlement Allocation to the Allegedly Aggrieved Employees.....	8
D. The Release .....	8
VI. THE SETTLEMENT IS FAIR AND REASONABLE AND WARRANTS COURT APPROVAL .....	8
A. Evaluation of the PAGA Settlement.....	9
B. Discounting Penalties for Purposes of Settlement.....	11
VII. THE ATTORNEY’S FEES AND COSTS SHOULD BE AWARDED .....	12
VIII. SUBMISSION TO THE LWDA.....	12
IX. THE SETTLEMENT ADMINISTRATOR .....	12
X. CONCLUSION .....	12

## Table of Authorities

### Cases

<i>Amalgamated Transit Union, Local 1756 v. Superior Court</i> (2009) 46 Cal.4th 993, 1003 .....	2, 3
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 613-17 (1997) .....	3
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969, 986 .....	passim
<i>Baumann v. Chase Investment Services Corp.</i> , 747 F.3d 1117, 1123-24 (9th Cir. 2014).....	3, 5
<i>Caliber Bodyworks, Inc. v. Super. Ct.</i> , 134 Cal.App.4th 365 (2005) .....	3
<i>Casida v. Sears Holding Corp</i> , 2012 WL 253217, at*3 (E.D.Cal. Jan. 26, 2012).....	4
<i>Concepcion</i> , 131 S.Ct. at 1751-52.....	5
<i>Dunk v. Ford Motor Company</i> (1996) 48 Cal.App. 4th 1794, 1802 .....	9
<i>Franco v. Athens Disposal Co.</i> , 171 Cal.App.4th 1277 (2009).....	3
<i>In re Marriage of Biddle</i> (1997) 52 Cal.App.4th 396, 399 .....	4
<i>Iskanian v. CLS Transportation</i> , 59 Cal.4th 348 (2014) .....	2, 3, 4
<i>Mallick v. Superior Court</i> (1979) 89 Cal.App. 3d. 434.....	9
<i>Officers of Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1995) 688 F.2d. 615, 624 .....	9
<i>Ortiz v. Fibreboard Corp.</i> , 527 U.S. 815, 832- 33 (1999) .....	3
<i>Pedroza v. Petsmart, Inc.</i> , at*15 (C.D. Cal. Jan. 28, 2013) .....	4
<i>Sakkab v. Luxottica Retail North America, Inc.</i> , 803 F.3d 425, 435-436 (9th Cir. 2015).....	2, 3, 5
<i>Sample v. Big Lots Stores, Inc.</i> , No. C 10-03276 SBA, 2010 WL 4939992 at *3 (N.D. Cal. Nov. 30, 2010).....	3
<i>Sanders v. Pacific Gas &amp; Elec. CO.</i> (1975) 53 Cal.App.3d 661, 671 .....	4
<i>Thomas v. Aetna Health of Cal. Inc.</i> , 2011 WL 2173715, at *11 (E.D. Cal. June 2, 2011) .....	4

### Statutes

Cal. Lab.Code § 2699(g)(l) .....	3
Cal. Labor Code Section 2698 et seq. ....	1
California Lab. Code §2698(l) .....	1, 5
Fed.R.Civ.P. 23 .....	3

1	Labor Code §2699(1)(2) .....	4, 9, 12
2	Labor Code §2699(f)(2) .....	4
3	Labor Code §2699(i) .....	4
4	Rule 23.....	3
5	Rule 23(a) .....	5
6	Rule 23(c)(2) .....	5
7	Rules 23(a)(4) and (g) .....	5

## I. Introduction

This is a PAGA action involving wage and hour claims on behalf of aggrieved employees, Plaintiff Braina Valencia (“Plaintiff”), individually and serving as the representative for the State of California, and her counsel sought civil penalties against Defendant.

This motion seeks approval of non-reversionary settlement for \$175,000 in an action alleging certain Labor Code violations, which Plaintiff brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”) on behalf of all current and former employees in the State of California at any time from June 20, 2018 up to and including the date the Court approves the Settlement between Plaintiff and Defendants (“Allegedly Aggrieved Employees”). Based on the latest information provided by Defendants, the number of employees (Allegedly Aggrieved Employees) for mediation purposes was estimated at approximately 2,213. PAGA is codified at Cal. Labor Code Section 2698 et seq. and provides:

The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

California Lab. Code §2698(1).

On or about June 20, 2019, Plaintiff sent notice to the LWDA, exhausting administrative remedies under the PAGA for failure to pay all wages owed for time spent in bag checks, and traveling from the front door of each warehouse to the workstation; failure to pay all overtime wages owed for time spent in bag checks, and traveling from the front door of each warehouse to the workstation; failure to provide meal periods and pay meal period premiums; failure to provide paid rest periods and pay missed rest period premiums; failure to pay all wages owed in a timely manner; failure to pay all wages owed upon termination; failure to provide complete/accurate wage statements; derivative UCL violations; and PAGA and other penalties. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became

1 authorized to act as Private Attorneys General on all alleged PAGA claims.

2 After exhausting administrative remedies, Plaintiff filed a Complaint on August 27, 2019,  
 3 in Alameda County Superior Court on behalf of herself and the Allegedly Aggrieved Employees  
 4 for claims alleged in the June 20, 2019 notice to the LWDA. In his Complaint, Plaintiff contends  
 5 that Defendants violated California law for Plaintiff and the Allegedly Aggrieved Employees by  
 6 failing to pay all wages owed for time spent in bag checks, and traveling from the front door of  
 7 each warehouse to the workstation; failing to pay all overtime wages owed for time spent in bag  
 8 checks, and traveling from the front door of each warehouse to the workstation; failing to provide  
 9 meal periods and pay meal period premiums; failing to provide paid rest periods and pay missed  
 10 rest period premiums; failing to pay all wages owed in a timely manner; failing to pay all wages  
 11 owed upon termination and failing to provide complete/accurate wage statements.

12 The settlement reached by the parties is intended to resolve the entirety of this matter on  
 13 behalf of Plaintiff and all current and former employees in the State of California from June 20,  
 14 2018 up to and including the date the Court approves the Settlement between Plaintiff and  
 15 Defendant.

## 16 **II. The Goals of PAGA and Its Requirements**

17 In 2003, the Legislature passed the PAGA, recognizing the historic underfunding of the  
 18 LWDA and its Division of Labor Standards & Enforcement (“DLSE”).

19 The goals of PAGA as set forth in decisions of California courts and the Ninth Circuit are  
 20 met in this Settlement Agreement. PAGA was enacted to obtain broader compliance with the  
 21 State’s labor laws. While procedurally a PAGA claim may be filed as a class action, a PAGA  
 22 claim is really an enforcement action pursued on behalf of the California Labor and Workforce  
 23 Development Agency which is the real party in interest. *Arias v. Superior Court* (2009) 46 Cal.4th  
 24 969, 986. The aggrieved employees have no substantive claims that may be asserted under PAGA.  
*Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993, 1003.

25 The differences between a traditional class action and a PAGA suit are well summarized in  
 26 *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 435-436 (9th Cir. 2015) en banc  
 27 review denied (2016). Following the California Supreme Court’s decision in *Iskanian v. CLS*  
*Transportation*, 59 Cal.4th 348 (2014), the Ninth Circuit explained:

28 The class action is a procedural device for resolving the claims of absent parties

on a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 832- 33 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-17 (1997). By contrast, a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer. An employee bringing a PAGA action does so "as the proxy or agent of the state's labor law enforcement agencies," *Iskanian*, 59 Cal.4th at 380 (quoting *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009)), who are the real parties in interest, see *id.* at 382. As the state's proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent employees, Cal. Lab.Code § 2699(g)(l), just as the state could if it brought an enforcement action directly. However, by obtaining such penalties, the employee-plaintiff does not vindicate absent employees' claims, for the PAGA does not give absent employees any substantive right to bring their "own" PAGA claims. See *Amalgamated Transit Union. Local 1756, AFL-CIO v. Superior Court*, 46 Cal .4th 993. 1003 (2009); see also *Iskanian*, 59 Cal.4th at 381 (explaining that "[t]he civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities").

*Sakkab*, supra at 435-436.

The approval process is different in a PAGA case as compared to a traditional class action. While the aggrieved employees are to receive 25% of the penalties collected by the State, this is not a substantive right they hold. Rather it is merely a sum to incentivize the bringing of a suit on behalf of the State:

The nature of PAGA penalties is also markedly different than damages sought in Rule 23 class actions. In class actions, damages are typically restitution for wrongs done to class members. But PAGA actions instead primarily seek to vindicate the public interest in enforcement of California's labor law. See *Sample v. Big Lots Stores, Inc.*, No. C 10-03276 SBA, 2010 WL 4939992 at \*3 (N.D. Cal. Nov. 30, 2010); *Franco v. Athens Disposal Co.*, 171 Cal.App.4th 1277 (2009). The bulk of any recovery goes to the LWDA, not to aggrieved employees. And, the twenty-five percent portion of the penalty awarded to the aggrieved employee does not reduce any other claim that the employee may have against the employer – in this case, for example, for withheld overtime pay. See *Caliber Bodyworks, Inc. v. Super. Ct.*, 134 Cal.App.4th 365 (2005). The employee's recovery is thus an incentive to perform a service to the state, not restitution for wrongs done to members of the class.

In the end, Rule 23 and PAGA are more dissimilar than alike. A PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the state, not a claim for class relief.

*Baumann v. Chase Investment Services Corp.*, 747 F.3d 1117, 1123-24 (9th Cir. 2014). That the 25



percent does not make the employees real parties in interest is clear from *Iskanian*:

A PAGA representative action is therefore a type of qui tam action. “Traditionally, the requirements for enforcement by a citizen in a qui tam action have been (1) that the statute exacts a penalty; (2) that part of the penalty be paid to the informer; and (3) that, in some way, the informer be authorized to bring suit to recover the penalty.” (*Sanders v. Pacific Gas & Elec. CO.* (1975) 53 Cal.App.3d 661, 671 (*Sanders*). The PAGA conforms to these traditional criteria, except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation. The government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit. (See *In re Marriage of Biddle* (1997) 52 Cal.App.4th 396, 399.)

*Iskanian*, supra at 382.

The settlement of a PAGA claim requires court approval pursuant to Labor Code §2699(1)(2) (“the superior court shall review and approve any settlement of any civil action pursuant to this part”). However, “[a] PAGA claim asserted on a non-class representative basis...is not considered a class action but a law enforcement action.” One does not have to meet the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at\*3 (E.D.Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal. Inc.*, 2011 WL 2173715, at \*11 (E.D. Cal. June 2, 2011); *Arias v. Superior Court*. 46 Cal.4th 969. 980-88 (affirming the lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim). *Pedroza v. Petsmart, Inc.*, at\*15 (C.D. Cal. Jan. 28, 2013)

PAGA provides that aggrieved employees may bring actions to recover civil penalties. Those civil penalties are generally \$100 per employee per pay period for an initial violation and \$200 per employee per pay period for subsequent violations. Labor Code §2699(f)(2). Of any civil penalties collected, 75 percent belongs to the LWDA and 25 percent belongs to the aggrieved employees. Labor Code §2699(i).

The appropriate focus of the Court’s review in the case at bar should be on whether the settlement enhances the State’s enforcement of its wage orders and whether it does so by a meaningful civil penalty paid to the LWDA. It is submitted that the monetary aspect of this settlement clearly meets this standard. The total settlement of \$175,000.00 for approximately 2,213 Aggrieved employees equates to an approximate \$9.57 per Allegedly Aggrieved Employee. After

1 payment of administration costs and requested attorneys' fees and costs, the proposed settlement  
 2 will provide approximately \$84,750, from which 75% (\$63,562.50) will be paid to the LWDA and  
 3 25% (\$21,187.50) will be distributed among the Allegedly Aggrieved Employees. (Declaration of  
 4 James M. Treglio ("Treglio Decl.") ¶9).

5 **III. Because the Allegedly Aggrieved Employees have no Substantive Claims, Traditional**  
 6 **Notice is not Required**

7 This is not the case in a PAGA action where the real party in interest is the LWDA and the  
 8 employees are nominal parties. See *Urbino v. Orkin Services of California*, 726 F.3d 1118, 1122-  
 9 23 (9th Cir. 2013). The LWDA, as the real party in interest has, of course, received formal notice  
 10 of the terms of the settlement as required by Labor Code §2698(l). But the Allegedly Aggrieved  
 11 Employees do not receive the traditional class notice:

12 Because a PAGA action is a statutory action for penalties brought as a proxy for  
 13 the state, rather than a procedure for resolving the claims of other employees,  
 14 there is no need to protect absent employees' due process rights in PAGA  
 15 arbitrations. Compare *Concepcion*, 131 S.Ct. at 1751-52 (observing "it is...odd to  
 16 think that an arbitrator would be entrusted with ensuring that third parties' due  
 process rights are satisfied"), with *Arias*, 46 Cal.4th at 984-87, 95 Cal.Rptr.3d  
 588, 209 P.3d 023. PAGA arbitrations therefore do not require the formal  
 procedures of class arbitrations. See *Baumann*, 747 F.3d at 1123.

17 Unlike Rule 23(c)(2), PAGA has no notice requirements for unnamed aggrieved  
 18 employees, nor may such employees opt out of a PAGA action. In a PAGA  
 19 action, the court does not inquire into the named plaintiff's and class counsel's  
 20 ability to fairly and adequately represent unnamed employees – critical  
 21 requirements in federal class actions under Rules 23(a)(4) and (g)...Moreover,  
 unlike Rule 23(a), PAGA contains no requirements of numerosity, commonality,  
 or typicality *Id.* at 1122-23 (citations omitted).

22 *Sakkab* (supra at 436).

23 **IV. Relevant Issues in the Current Litigation and Investigation and Discovery Regarding**  
 24 **Defendant's Labor Practices, and Risks Associated with Litigation**

25 A PAGA Notice was filed by Plaintiff against Defendant for Defendant's alleged violation  
 26 of the California Private Attorney Generals Act of 2004, Labor Code §2698, et seq. The LWDA  
 27 did not notify Plaintiff that it intended to further investigate or pursue these allegations within  
 28 sixty-five (65) days of the postmark date of the PAGA letter.

Plaintiff filed a Complaint on August 27, 2019, in Alameda County Superior Court on behalf of himself and the Allegedly Aggrieved Employees for claims alleged in the June 20, 2019 notice to the LWDA. In his Complaint, Plaintiff contends that Defendant violated California law by failing to pay all wages owed for time spent in bag checks, and traveling from the front door of each warehouse to the workstation; failing to pay all overtime wages owed for time spent in bag checks, and traveling from the front door of each warehouse to the workstation; failing to provide meal periods and pay meal period premiums; failing to provide paid rest periods and pay missed rest period premiums; failing to pay all wages owed in a timely manner; failing to pay all wages owed upon termination and failing to provide complete/accurate wage statements.

As the Court will recall, the matter was originally filed as a class action, leading to Plaintiff's Motion for Class Certification. In that Motion (ECF 65), Plaintiff provided information which indicated that the practices Plaintiff alleged violated California law ended shortly after the PAGA notification was filed. (ECF No. 65-4, ¶8).

Defendant at all times disputed and denied, and continues to dispute and deny, that it was ever liable to Plaintiff, or any other person, for any of the claims asserted in the Complaint, including the claims for penalties under PAGA. Defendant has also argued that the Court would rule PAGA claims in this matter would be unmanageable, which, given the Court's ruling on Plaintiff's Motion for Class Certification (ECF 91), seems more likely than not. And indeed, the intervening case of *Huerta v. CSI Electrical Contractors* (2024) 15 Cal.5th 908, seems to strengthen the defenses proffered by Defendant. (Decl. Treglio at ¶¶20-22).

Defendant has provided information that there were approximately 2,213 aggrieved employees during the PAGA Period. (Decl. Treglio at ¶13). Further, and as described in detail in the Declaration of James M. Treglio, during the initial mediation Defendant disclosed that during the PAGA period – the period where the practices at issue were in use – there were 72,088 pay periods. After several months of further negotiations, the parties reached an agreement in principle and fully executed a settlement agreement on September 12, 2024. (Treglio Decl. ¶12)

## **V. The Settlement and Distribution of PAGA Penalties**

### A. Summary of Settlement Terms

The proposed Settlement Agreement (Treglio Decl., Exhibit 1) involves the formation of a non-reversionary fund totaling \$175,000.00 (“Gross Settlement Fund”). The \$175,000.00 fund that is created will be used to pay attorney fees and litigation costs (not to exceed \$57,750.00 in fees plus \$7,500 in costs) and settlement administration costs subject to Court approval) to Simpluris, Inc. The Settlement Fund is thus \$84,750.00. Seventy-five percent (75%) of the remaining Settlement Fund (i.e. (\$63,562.50.00) will be distributed to the California Labor & Workforce Development Agency (“LWDA”) as required by the PAGA and the remaining twenty-five percent (25%) (i.e. approx. \$21,187.50.00) will be distributed to all Allegedly Aggrieved Employees on a pro rata basis during the PAGA Period. (Treglio Decl. ¶14).

	Settlement Amount
Settlement Amount	\$175,000.00
Attorney’s Fees and Costs	\$57,750.00
Administrator	\$15,000.00 Subject to Court approval
Total PAGA Penalties:	\$84,750.00
75% to LWDA	\$63,562.50
25% to Allegedly Aggrieved Employees Members	\$21,187.50

### B. Payment and the Notice

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, Plaintiff Enhancement Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check

1 shall prominently state the date (not less than 180 days after the date of mailing) when the check  
 2 will be voided. The Administrator will cancel all checks not cashed by the void date. Before  
 3 mailing any checks, the Settlement Administrator must update the recipients' mailing addresses  
 4 using the National Change of Address Database. (Settlement Agreement ¶¶4.3, 4.4, 4.4.1) (Treglio  
 5 Decl. ¶16).

### 6 **C. Settlement Allocation to the Allegedly Aggrieved Employees**

7 As noted, twenty-five percent (25%) of the PAGA penalties will be allocated to the Allegedly  
 8 Aggrieved Employees. The portion to each of the Allegedly Aggrieved Employee will be treated as  
 9 non-wages since these are civil penalties and reported by the Settlement Administrator by law.

### 10 **D. The Release**

11 The California Supreme Court has explained that a judgment in “a representative action  
 12 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of  
 13 2004...is binding not only on the named employee plaintiff but also on government agencies and  
 14 any aggrieved employee not a party to the proceeding.” *Arias*, 46 Cal. 4th at 985-986.

15 The release in the Settlement Agreement narrowly binds the PAGA Settlement Group  
 Members for civil penalty claims brought in the Action, as follows:

16 31. “Release by Aggrieved Employees” means All Aggrieved Employees are  
 17 deemed to release, on behalf of themselves and their respective former and  
 18 present representatives, agents, attorneys, heirs, administrators, successors, and  
 19 assigns, the Released Parties from all claims for PAGA penalties that were  
 20 alleged, or reasonably could have been alleged, based on the facts stated in the  
 21 Operative Complaint and the PAGA Notice concerning alleged violations of the  
 22 California Labor Code and the California Industrial Welfare Commission Wage  
 23 Orders during the PAGA Period for alleged: failure to pay all minimum wages,  
 24 failure to pay overtime compensation, failure to provide compliant rest periods to  
 25 and/or pay missed rest break premiums, failure to provide meal periods and/or  
 pay missed meal period premiums, failure to pay all wages owed, failure to  
 provide complete and accurate wage statements, unfair business practice  
 violations, and to indemnify employees for necessary business expenditures  
 incurred in discharge of duties, in violation of Labor Code sections 200-203, 204,  
 206.5, 210, 226, 226.3, 226.7, 246 510, 512, 515, 1174,1174.5, 1182.12, 1193.6,  
 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and IWC Wage Order No. 9-2001.

26 The release in the Settlement Agreement is narrowly related to the claims alleged in the  
 27 Complaint. The release is therefore proper and reasonable.

## 28 **VI. The Settlement is Fair and Reasonable and Warrants Court Approval**

1 In 2016, PAGA was amended to require the Court to “review and approve any settlement  
2 of any civil action filed pursuant to this part.” (Labor Code §2699(1)(2).) The amendment also  
3 required that the “proposed settlement shall be submitted to the agency at the same time that it is  
4 submitted to the court.” As such, the Settlement and this Motion have been concurrently submitted  
5 to the LWDA in accordance with this section. (Treglio Decl. ¶17.)

#### 6 **A. Evaluation of the PAGA Settlement**

7 Although PAGA and the legislative history do not require a Court to analyze a PAGA  
8 settlement in comparison to the “value” of the claims, the penalties obtained are not only reasonable  
9 but serve as an overwhelmingly successful resolution in favor of the PAGA Settlement Group  
10 Members and the State of California.

11 A representative settlement is presumed fair where: (1) the settlement is reached through  
12 arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the  
13 court to act intelligently; (3) (and) counsel is experienced in similar litigation. *Dunk v. Ford Motor*  
14 *Company* (1996) 48 Cal.App. 4th 1794, 1802. A court may also consider relevant factors such as  
15 the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further  
16 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,  
17 the extent of discovery completed and the stage of the proceedings, the experience and views of  
18 counsel, [and] the presence of a governmental participant. *Officers of Justice v. Civil Service Com’n*  
19 *of City and County of San Francisco* (9th Cir. 1995) 688 F.2d. 615, 624. “This list is not exhaustive  
20 and should be tailored to each case. Due regard should be given to what is otherwise a private  
21 consensual agreement between the parties.” *Dunk*, supra, 48 Cal.App.4th at 1801. Moreover, the  
22 trial court has broad powers to determine whether a proposed [representative action] settlement is  
23 fair. *Mallick v. Superior Court* (1979) 89 Cal.App. 3d. 434.

24 Plaintiff’s theory centers around Defendant’s numerous violations against Plaintiff and the  
25 Allegedly Aggrieved Employees including failing to pay all wages owed for time spent in bag  
26 checks, and traveling from the front door of each warehouse to the workstation; failing to pay all  
27 overtime wages owed for time spent in bag checks, and traveling from the front door of each  
28 warehouse to the workstation; failing to provide meal periods and pay meal period premiums;

1 failing to provide paid rest periods and pay missed rest period premiums; failing to pay all wages  
2 owed in a timely manner; failing to pay all wages owed upon termination and failing to provide  
3 complete/accurate wage statements. Defendant maintains data for all approximate 2,213 Allegedly  
4 Aggrieved Employees. (Treglio Decl. ¶18).

5 Plaintiff sought PAGA penalties alleging that Defendant failed to comply with or provide  
6 the Allegedly Aggrieved Employees with compensation or penalties as required by state law,  
7 including claims and potential claims for penalties recoverable under PAGA concerning wages,  
8 including failing to pay all wages owed for time spent in bag checks, and traveling from the front  
9 door of each warehouse to the workstation; failing to pay all overtime wages owed for time spent  
10 in bag checks, and traveling from the front door of each warehouse to the workstation; failing to  
11 provide meal periods and pay meal period premiums; failing to provide paid rest periods and pay  
12 missed rest period premiums; failing to pay all wages owed in a timely manner; failing to pay all  
13 wages owed upon termination and failing to provide complete/accurate wage statements.  
14 Defendant vehemently opposed the claims, arguing that Plaintiff and the Allegedly Aggrieved  
15 Employees were properly compensated. Thus, Plaintiff valued the PAGA claims at \$2,833,500.  
16 (Treglio Decl. ¶19).

17 As the Court noted in its Denial of Plaintiff's Motion for Class Certification, there are numerous  
18 issues involving the manageability of these claims, and the fundamental question of whether or not time  
19 spent in security checkpoints or walking through a workplace was compensable time. (ECF Nos. 89 and  
20 91). In addition, during the pendency of the action, the California Supreme Court held in *Huerta v. CSI*  
21 *Electrical Contractors* (2024) 15 Cal.5th 908, that while time spent in security lines can be  
22 compensable time, time spent in a parking lot, or walking from the front door to a clock-in station  
23 (which encompassed Plaintiff's claims) was not. And in fact, Defendant's evidence submitted with its  
24 Opposition to Class Certification (ECF 71) indicates that the time spent in security lines was minimal, at  
25 best. (Treglio Decl. ¶20)

26 As a result, Plaintiff and her counsel determined that prevailing on the PAGA claims,  
27 particularly in light of the *Huerta* decision, was unlikely. Moreover, as stated in Plaintiff's Motion for  
28 Class Certification, the policies and practices at issue in this matter ended shortly after Plaintiff



submitted her PAGA notification. Thus, even if the Court were to award penalties, it would be limited to the time before the filing of the Complaint. (Treglio Decl. ¶21)

Based on the information provided both formally and informally, Plaintiff determined that during the effective PAGA period, there was a total of 72,088 pay periods at issue, for a total PAGA penalties of \$7,208,800 per violation. However, taking into account the Court's Ruling on Class Certification, and on the California Court's ruling in *Huerta*, Plaintiff believes that the present settlement of \$175,000, representing 2.4% of the total exposure for these claims is fair and reasonable. (Treglio Decl. ¶22)

As Magistrate Boone noted in approving a PAGA settlement representing 2.2% of the total value of the PAGA claims, *Connelly v. Starbucks Corporation* (E.D. Cal., Sept. 29, 2023, No. 1:21-CV-00746-SAB) 2023 WL 6387077, at \*7, PAGA settlements with lower value can be approved where, as here, other benefits to the Aggrieved Employees were made. And here, Defendant modified its timekeeping procedures to allow Plaintiff and the other Aggrieved Employees to clock-in as soon as they walk into the facility. (See ECF 65-4, ¶8). (Treglio Decl. ¶23)

This result is positive and favorable to the State, which will receive \$63,562.50 and for the Allegedly Aggrieved Employees, who will collectively receive \$21,187.50. The Allegedly Aggrieved Employees will receive, on average \$9.57 per aggrieved employee, with Allegedly Aggrieved Employees who worked more during the PAGA Period receiving a greater share, which is similar to but in most instances better than a settlement/judgment on a class-wide basis. (Treglio Decl. ¶24)

#### **B. Discounting Penalties for Purposes of Settlement**

First, Defendant has always disputed that Plaintiff would prevail on liability claiming that Plaintiff and the Allegedly Aggrieved Employees were properly compensated. Defendants deny any wrongdoing and liability arising from the claims alleged.

The impact that the novel COVID-19 virus has had on businesses across the country is apparent and is on virtually every news channel in America. Unemployment rates have skyrocketed to levels similar to the Great Depression and most economists believe that Americans have not yet felt the true impact of COVID-19 on Americans. Defendant has suffered a great degree of economic harm as with most businesses.



1 This is a take it or leave it case – the Court could rule that Plaintiff and the Allegedly  
 2 Aggrieved Employees were properly compensated. Under these circumstances although very  
 3 unlikely to impossible, Plaintiff and the Allegedly Aggrieved Employees would not recover  
 4 anything. The downside risk is apparent, and any judgment obtained through litigation would  
 5 require not only substantial investment in attorney time and litigation costs but also the risk of  
 6 serious and lengthy appeals, which Plaintiff's counsel weighed greatly when negotiating a  
 7 resolution of this claim.

#### 8 **VII. The Attorney's Fees and Costs should be Awarded**

9 For the efforts and the risk undertaken in obtaining a common fund non-reversionary  
 10 settlement that benefits the LWDA and the Allegedly Aggrieved Employees, the Parties allocated  
 11 \$57,750 or 33% of the Settlement Amount to Plaintiff's Counsel for reasonable attorney's fees and  
 12 \$7,500.00 costs and expenses subject to the Court's approval. The fees are warranted by law and are  
 13 well within reason given the extraordinary results.

#### 14 **VIII. Submission to the LWDA**

15 As set forth in the Treglio Decl. at ¶17, the settlement and this motion are concurrently  
 16 being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic  
 17 submission is attached as Exhibit "C" to the Treglio Declaration.

#### 18 **IX. The Settlement Administrator**

19 Simpluris, Inc. will serve as the Settlement Administrator, and will be responsible for  
 20 processing the settlement payments and providing notice to the Allegedly Aggrieved Employees.  
 21 The Settlement Agreement authorized the payment administration costs subject to Court approval  
 22 (Settlement Agreement ¶ 7.1).  
 23

#### 24 **X. Conclusion**

25 In light of the foregoing, Plaintiff respectfully requests that the Court approve the parties  
 26 Settlement Agreement attached as Exhibit B to the Treglio Declaration so that Simpluris, Inc. may  
 27 begin administering the settlement in accordance with the terms of the Agreement.  
 28

1 Dated: December 12, 2024

Respectfully,

2 POTTER HANDY, LLP

3  
4 /s/ James M. Treglio

5 By: \_\_\_\_\_  
James M. Treglio

6 *Attorneys for Plaintiff Briana Valencia, in his*  
7 *capacity as Private Attorney General*  
8 *Representative*  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**VALENCIA V. VF OUTDOOR, LLC, ET AL.**  
Case No.: 20STCV24579

I, the undersigned, am over the age of eighteen years and am resident of San Diego County, California; I am not a party to the above-entitled action; my business address is 100 Pine St., Ste 1250, San Francisco, CA 94111.

On December 12, 2024, I served the following document(s):

- 1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT;**
- 2. DECLARATION OF JAMES M. TREGLIO; and**
- 3. [PROPOSED] JUDGMENT.**

Addressed to:

LONNIE D. GIAMELA, SBN 228435  
lgiamela@fisherphillips.com  
LALONNIE V. GRAY, SBN 336999  
lgray@fisherphillips.com  
FISHER & PHILLIPS LLP  
444 South Flower Street, Suite 1500  
Los Angeles, California 90071

- ☐ **BY USPS MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at San Diego, California.
- ☐ **BY FACSIMILE:** In addition to the service by mail as set forth above, I forwarded a copy of said documents via facsimile to the listed facsimile number.
- ☐ **BY OVERNITE EXPRESS:** I caused such envelope with postage thereon fully prepaid to be placed in the Designated Overnight Express drop box at San Diego, California.
- ☐ **BY PERSONAL SERVICE:** I caused said documents to be personally served on all listed recipients via Ace Attorney Services.
- ☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the listed documents to be electronically filed and subsequently emailed to the recipient(s).

Executed on December 12, 2024 from San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ James M. Treglio  
James M. Treglio